

**California Environmental Protection Agency (Cal/EPA)
Advisory Committee on Environmental Justice (CEJAC)**

February 15, 2005

DRAFT MEETING SUMMARY

Cal/EPA Headquarters Building
Coastal Hearing Room
1001 I Street, Sacramento, California

Committee Members in Attendance:

- Arrieta, David (DNA Associates)
 - Clark, Henry (West County Toxics Coalition)
 - DeAnda, Teresa (Californians for Pesticide Reform)
 - Dorsey, Michael (San Diego County, Dept. of Environmental Health)
 - Jones, William (Los Angeles Co. Fire Dept./Health Haz. Mat. Division)
 - Kidokoro, Yuki (Communities for a Better Environment)
 - Lee, Barbara (No. Sonoma County Air Pollution Control District)
 - Lyou, Joseph (California Environmental Rights Alliance)
 - Magnani, Bruce (California Chamber of Commerce)
 - Southwick, Brenda (California Farm Bureau Federation)
 - Takvorian, Diane (Environmental Health Coalition)
 - Treviño-Sauceda, Hermila (Líderes Campesinas)
 - Tuck, Cindy (California Council for Environmental and Economic Balance)
 - Volturno, Lenore (Pala Band of Mission Indians)
 - Wallerstein, Barry (South Coast Air Quality Management District)
 - Allen, Detrich (City of Los Angeles, Dept. of Environmental Affairs)
- listened in by webcast

Members of the Public

Felipe Aguirre, Comite Pro Uno

Martha Arguello, PSK

Cynthia Babich, Del Amo Action Committee

Davis Baltz, Commonweal

Sylvia Betancourt, East Yard Communities for Environmental Justice

Lena Brook, Clean Water Action

Frank Caponi, Los Angeles County Sanitation District

Robert Cabrales, Communities for a Better Environment

Cynthia Cory, California Farm Bureau

Alicia Deen, Environmental Justice Coalition for Water

Caroline Farrell, The Center on Race, Poverty and the Environment

Timothy Gabriel, Natural Resources Defense Council

Gwen Gary, Liberty Hill Foundation

Martha Guzman, California Rural Legal Assistance Foundation

Elvia Hernandez, Pacoima Beautiful

Shabaka Heru, Community Coalition for Change

Kevin Keefer, Western Plant Health Association

Linda Lam, Communities for a Better Environment

Rey Leon, Latino Issues Forum

Angelo Logan, East Yard Communities for Environmental Justice

Rachel Lopez, CCAEJ

Bill Magavern, Sierra Club

Jesse Marquez, Coalition for a Safe Environment

Cynthia Medina, Del Amo Action Committee

Laurie E. Nelson, Consumer Specialty Products Association

Penny Newman, CCAEJ

Renee Pinel, Western Plant Health Association

Ron Reed, Karuk Tribe

Fernando Rejon, Pacoima Beautiful

Bhavna Shamasunder, Urban Habitat

Tim Shestek, American Chemistry Council
Robina Suwol, California Safe Schools
Rosie Solorzano, Youth United for Community Action, East Palo Alto
Brenda Southwich, California Farm Bureau
Emma Suárez, California Farm Bureau Federation
Jesus Torres, Communities for a Better Environment
Mily Trevino-Sauceda, Lideres Campesinas
Amy Vandenvana, Environmental Justice Coalition for Water
Lenore Volturbo, Pala Band of Mission Indians
Michael Warburton, PublicTrust Alliance / EJ Coalition for water
LaDonna Williams, People for Children's Health & Environmental Justice

Welcome, Opening Remarks, and Administrative Related Matters

At 10 am, Dr. Alan Lloyd, Cal/EPA Secretary opened the meeting by welcoming and thanking the members of the Environmental Justice Advisory Committee (CEJAC). He stated that Environmental Justice (EJ) is a priority concern for him and Cabinet Secretary Tamminen. He stated that EJ is an important public health issue, and “business as usual” might have played a role in the problems we face today. Having visited communities impacted by multiple sources of air pollution, Dr. Lloyd was of the opinion that changes are necessary to address these problems, and believes that we can develop the tools to evaluate cumulative impacts in a technically sound and systematic fashion.

Dr. Lloyd told the committee that after listening to staff presentation and public comments on the working definitions and pilot project plans, they would identify and deliberate on the key issues of the items. He expected that the committee would summarize the discussions and provide recommendations to Interagency Working Group on Environmental Justice (IWG) the following day. He also specified that the committee could present their view on using emissions and exposures as potential risk indicators when some toxic compounds have no health risk numbers.

Dr. Lloyd announced that Dr. Shankar Prasad would be replacing Tam Doduc in leading the EJ efforts at Cal/EPA and would ensure that IWG and CEJAC continue to meet regularly to monitor the progress of the pilot projects as well as chalk out future program plans.

All the members of CEJAC agreed that Diane Takvorian and Detrich Allen will remain serving as co-chairs for the committee. Both agreed to continue serving

until such time a smooth transition could take place. The committee elected Barbara Lee to serve as secretary for the day and as spokesperson in presenting its recommendations to the IWG. ARB staff was recruited to prepare minutes of the meeting.

Carol Monahan, Chief Counsel for OEHHA, explained that the role of CEJAC is to assist and serve as a resource to the IWG. The committee could basically chart its own course and define its objectives for the next year or two because SB 98 does not necessarily specify the committee's future role or course of action. She mentioned that the committee could request from Cal/EPA necessary legal and administrative support. She also gave a brief summary of legal requirements for public meeting under the Brown Act and Bagley-Keene Open Meeting Act. She advised the members to get familiarized with the legal requirements.

Malinda Hall, Cal/EPA Special Assistant for Environmental Justice, gave a brief summary on the agency's two pathways addressing EJ—the long-term EJ strategy and the short-term EJ Action Plan. The committee is to help IWG in carrying out the EJ Action Plan. The five phases of the Action Plan are expected to be completed by December 2006.

A motion was passed unanimously by the committee requesting CalEPA to provide administrative, legal and financial support to CEJAC to ensure its effectiveness. Administrative support would include staff taking minutes and providing assistance during the meetings such as computer-related tasks, translation for Spanish speakers, copying services, etc. Legal support is primarily a reference ensuring that legal counsel is available during the meetings to respond to member questions regarding relevant regulations, etc. Financial support refers to travel and per diem costs for the members and their alternates of non-profit organization members.

Multimedia Cumulative Impact Working Definition

Staff Presentation

Dr. John Faust of OEHHA presented the staff's proposed working definition of multi-media cumulative impacts and the rationale behind it. The definition development included consideration of CEJAC's interim definition, California Environmental Quality Act, the National Environmental Policy Act and others. Staff also considered public comments received from workshops, written submittals, emails, and on-line forums. He emphasized that the definition should remain flexible and be modified based on the pilot projects' experience.

The definition proposed by the staff was **“Multi-media cumulative impacts means the combined effects of emissions, discharges, and exposures on human health and the environment in a geographic area, taking into**

account sensitive populations.” A narrative section was included to clarify the definition.

Public Comments

- Many commended the efforts of Cal/EPA.
- Many communities are faced with health problems and pollution from multiple sources such as toxic landfills, refineries, freeways, diesel trucks, warehouses, rail yards, ports, etc.
- The working definition has to help articulate a policy that can be used effectively on the ground.
- Compound specific risk assessment is not working; some risk numbers are not protective for infants and children.
- Need to deal with multiple compounds in a single medium/multimedia.
- Need to address accidental and intentional release of pollutants.
- Only peer-reviewed, science-based data should be included for cumulative impact analysis.
- Not enough science to support the inclusion of socioeconomic factors for evaluating cumulative impacts.
- Less quantifiable data and socioeconomic factors should be included in the definition.
- Terms used in the definition are not precise.
- Definition should be kept simple; may have a simple primary definition and a secondary definition.
- Cal/EPA's goal should be to prevent, reduce, and eliminate cumulative impacts.
- The term 'risk' should be included in the definition.

Committee's Discussion

- Many suggestions to define and/or refine the terms used in the definition.
- Staff's definition contains terms that are vague and undefined.
- Some believed that the longer the definition, the more the confusion; should keep it simple and explain the details in the narrative.
- Some believed the definition should be as inclusive as possible.
- Some members presented their own working definitions.
- Human impacts could be characterized in terms of four categories: to whom, causes, types, and time-frame.
- What are the stressors and should socioeconomic factors be in the definition?
- Make sure exposures are those related to environmental causes.
- Some suggested to use the staff's definition and keep clarifications and interpretations of the definition in the narratives.
- Need to address accidental and intentional releases of pollution in the definition.
- One member suggested clarifying the terms first before adopting a definition.
- The terms included for clarifications are effects, emissions, discharges, exposures, geographical area, sensitive populations/stressors, and socioeconomic factors.

- Some supported impact analysis be based only on quantitative risk assessment and peer-reviewed data.
- Some believed that quantitative risk assessment is good but should be expanded to consider other data.
- Community data based on local knowledge are important and relevant to the overall impact analysis.
- A debate on how to define the criteria by which data are qualified as peer-reviewed did not end up with any resolution.
- A discussion on geographical area included:
 - The area should be big enough to do a community based assessment, and to encompass the effects of concern.
 - The area may not be too large that effects are masked by averaging.
 - The area as used for the pilot projects.
 - Area used in pilot project only lays the ground work for the future so that a guidance for defining the geographical area can be developed.
- A discussion on sensitive population/stressors included:
 - Generally, sensitive populations should include children, elderly, pre-conditioned, health-compromised, and others.
 - Should or shouldn't include "predisposed", access to health care, access to safe water, food, and housing.
- A discussion on socioeconomic factors included:
 - Cal/EPA should consult USEPA's framework.
 - Should add gender as a factor.
- Motion was taken to extend the meeting for 1.5 hours.
- Based on public comments and members' suggestions, an alternative working definition of cumulative impacts was proposed.
- Some members, however, did not support the alternative definition but preferred to support the staff's definition.
- The alternative definition was not for multi-media cumulative impacts, but just cumulative impacts, because one can be looking at a single medium or many media, depending on the focus at the time.

The following was the explanation of CEJAC's perspective about cumulative impacts to be presented to the IWG the following day:

The goal of the cumulative impact analysis is to understand and characterize effects on public health and the environment; this is not in any way intended to create a burden on a community to prove that effects are occurring in order for these effects to be analyzed or addressed.

A cumulative impacts analysis needs to consider all emissions and discharges, including past releases that may still affect public health and the environment, contemporary releases, and reasonably foreseeable releases. A release may be reasonably foreseeable even if it has not been formally identified in writing, such as projects in early *stages*, but this is not intended to include all potential

scenarios without regard to how likely they may be. Impacts may result from releases from a single source, or from more than one source, and they may involve only one environmental media, or they may involve multiple media. All types of releases should be considered, including those that are routine, periodic, or episodic, accidental or intended, or any other type of release that may impact public health or the environment. Impacts may also result from exposures that occur within the home, such as childhood exposure to lead-based paint; these types of exposures may be important in some cumulative impact analyses but not important in others.

The cumulative impact analysis should attempt to provide the most robust characterization of impacts on public health and the environment. Quantitative risk assessment can provide important information about these impacts but there are gaps in the data and tools that are currently available for quantitative analysis; quantitative analyses will often need to be supplemented with semi-quantitative or qualitative assessments. There is a fundamental tension between the need to enhance and expand the analyses used, and the concern that these analyses provide quality information and support sensible decision-making.

This is especially true in deciding the role of peer review in conducting these analyses. Peer review has played an important role in science and environmental regulation, and in certain circumstances it is required under statute. At the same time, requiring all data used to be peer-reviewed may create barriers against the development of new and more robust analyses, and may make it difficult for communities to provide information for consideration.

The Committee specifically discussed the need to make better use of knowledge that exists within and about our communities. Business members on the Committee raised concerns, however, that these analyses will ultimately be used in decisions that will affect the creation and maintenance of jobs, and economic growth. In that respect, they want to be sure that analyses are based on credible data and sound science.

Some people experience a greater effect from a given exposure, such as infants, children, and the elderly, pregnant women and fetuses, and people who have a pre-existing illness or condition that leaves them more susceptible to harm from environmental pollutants. In addition, there are socio-economic factors that can also exacerbate the effect of environmental pollutants, such as race, income, lack of access to health care, and the lack of basic infrastructure (such as adequate nutrition, shelter, and waste disposal, etc.). The assessment of these factors, and how they interact with the effects of environmental pollutants, is an area where the tension about the role of peer review is particularly strong. Communities have a strong desire to have their circumstance and experience considered. The business community strongly feels that the data and tools are not well developed and that good science and peer review are critical in moving forward in this arena.

Generally speaking, the cumulative impact analysis is a community-based analysis. The geographic area considered should be large enough to encompass the effects, but not so large as to mask effects through averaging.

Resolution

The following definition was approved with 8 in favor, 4 against, and 1 abstaining.

Cumulative impacts means exposures or public health and environmental effects from the combined emissions and discharges, in a geographic area including environmental pollution from all sources, whether single or multi-media, routinely, accidentally, or otherwise released. Impacts take into account sensitive populations and socioeconomic factors.

Precautionary Approach Working Definition

Staff Presentation

(The presentation was canceled to save time for public comments.)

The definition proposed by the staff was **“Precautionary Approach means taking action to protect public health and the environment if a reasonable threat of harm exists based upon the best available science, even if absolute and undisputed scientific evidence is not available to determine the exact nature and extent of risk.”** A narrative section was included to clarify the definition.

Public Comments

(At this time, the public was allowed to present comments on the working definition of Precautionary Approach as well as other topics because the time was running short and some members of the public had to leave.)

The following includes the key points related to the working definition of Precautionary Approach:

- Many commended the efforts of Cal/EPA.
- Any type of harm is not acceptable. Therefore, the word “serious” should be removed from the definition.
- An implicit acknowledgement of Trustee (public Trust doctrine) should be made. Cal/EPA is responsible for keeping resources in usable condition for Trust (being the public).
- Focus should be on alternatives. Burden of proof should be shifted to proponent of project.
- After best available science, we should add other relevant information.
- The definition should include the words “serious and irreversible harm” and must be consistent with other existing definitions.

- Terms in the definition need to be clearer and better defined.
- Clear and simple language should be used in the definition.
- The definition should be consistent with the original recommendation of CEJAC.
- What constitutes “reasonable”, the term used in the definition?

Committee’s Discussion

- There were discussions on three changes among the members to modify the staff’s proposed working definition of Precautionary Approach:
- The first change was the insertion of the word "anticipatory" before "action".
 - A precautionary approach requires taking anticipatory action
 - There were questions as to what type of action is being considered as a precautionary approach and the change would clarify that an action is being taken in anticipation of possible effects, not a reactionary action.
 - Although initially there was some concern about inserting the word "anticipatory", ultimately all the Committee members supported the insertion of that word.
- The second change was adding the phrase of "and other relevant information".
 - This addition would be taking anticipatory action based upon the best available science and other relevant information.
 - The community groups have a wealth of information about the circumstances that exist within their communities based on their own observations and experiences.
 - This information and other non-peer-reviewed scientific quantifiable information can inform decision making and should be part of any forward-looking consideration of the problem and how to respond to it.
 - A few members had concerns about including "and other relevant information," being uncertain about the quality of information that would be included.
- The third change was the removal of the word "serious" before "harm".
 - The reason for removing the qualifier "serious" was because testimony about what one person considers serious versus what another would consider serious.
 - It is important to review the seriousness of the potential harm, the extent to which it might be irreversible and a number of other factors in determining what kind of action is appropriate. However, there may be simple actions that could be taken to prevent any harm from occurring and there would be little objection to those actions being taken. The Committee did not want that arena of decision-making pulled out of the purview of the definition of "Precautionary Approach".

- A few members did not support deleting “serious”. They preferred using “serious and irreversible” as qualifiers for “harm”. They cited the need for consistency with definitions used by other agencies and organizations.

Resolution

The following definition was approved with 9 in favor, and 3 against.

Taking anticipatory action to protect public health or the environment if a reasonable threat of harm exists based upon the best available science and other information, even if absolute and undisputed scientific evidence is not available to assess the exact nature and extent of the risk.

Wrap Up

The Committee agreed not to set up any subcommittees for specific tasks. They selected the Co-chairs and Cindy Tuck as an ad-hoc committee specifically for planning the next CEJAC meeting. The meeting adjourned at 6:30 pm.